

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCE

Ex parte: DAVID R. WELLAND, DONALD A. KERTH, and GAIYI WANG

Application 09/686,072

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on October 15, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matter requiring attention prior to docketing is identified below.

The Final Rejection mailed on July 12, 2004, list the following grounds of rejection:

Claim 85 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.



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Claims 1, 3-4, 52-54, 66-79, and 81-85 are rejected under 35 U.S.C. § 103(a) as being unpatentable Bradley(US 6,087,865) in view of Dufour (US 6,111,4701).

Appellant reiterates these grounds of rejection on page 10 of the Appeal Brief filed June 15, 2005. The Examiner's Answer mailed August 11, 2006, states that "[t]he Appellant's statement of the grounds of rejection to be reviewed on appeal is correct." However, only the following grounds of rejection are listed:

Claims 1, 3-4, 52-54, 66-79, and 81-85 are rejected under 35 U.S.C. § 103(a) as being unpatentable Bradley(US 6,087,865) in view of Dufour (US 6,111,4701).

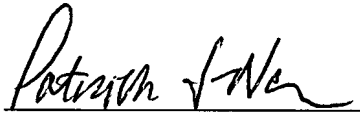
Under heading (9) Grounds of Rejection the Examiner failed to discuss the rejection of claim 85 under 35 U.S.C. § 112, second paragraph. Therefore, it is not clear whether the Examiner has dropped the rejection of claim 85 under 35 U.S.C. § 112, second paragraph or whether the Examiner has inadvertently omitted this rejection. Clarification is required.

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Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) for a determination regarding the rejection of claim 85 under 35 U.S.C. § 112, and, if necessary, to vacate the Examiner's Answer mailed August 11, 2006, and issues a revised Examiner's Answer; and
- 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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